



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

October 21, 2021

The Honorable Jake Corman
President Pro-Tempore
Pennsylvania State Senate
350 Main Capitol Building
Harrisburg, PA 17120

The Honorable Kim Ward
Majority Leader
Pennsylvania State Senate
292 Main Capitol Building
Harrisburg, PA 17120

The Honorable Bryan Cutler
Speaker
Pennsylvania House of Representatives
139 Main Capitol Building
Harrisburg, PA 17120

The Honorable Kerry Benninghoff
Majority Leader
Pennsylvania House of Representatives
110 Main Capitol Building
Harrisburg, PA 17120

Dear Legislative Leaders,

The Attorney General has asked me to respond to your October 18, 2021 correspondence. The Office of Attorney General acknowledges and appreciates your position and inquiry. Pursuant to section 204(b) of the Commonwealth Attorneys Act, 71 P.S. §732-204(b), the Attorney General reviews all regulations for “form and legality” – i.e. whether the regulation is in improper form, not statutorily authorized, or unconstitutional.

Issues surrounding the policy aspects of a regulation are handled through the process established by the Regulatory Review Act, 71 P.S. §§ 745.1-745.14. This Act subjects the regulation to review by the Independent Regulatory Review Commission and provides oversight by the appropriate legislative committees. The Office of Attorney General may receive a final-form regulation only after it has been reviewed, and voted upon, pursuant to the procedures set forth in the Act.

As with any regulation, we will thoroughly review the RGGI rulemaking packet, including all public comments and supporting documentation that inform our form and legality determination. Our role in the regulatory process, while substantive, is also narrow; we are prevented from making any policy decisions regarding a particular regulation. We must adhere to the rule of law laid out in the Commonwealth Attorneys Act – a review for “form and legality” and no further.

We realize that IRRC approved the rulemaking, and are aware that it is now subject to further legislative review through the concurrent resolution process.

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To date, this rulemaking packet has not been delivered to the Attorney General for review. We cannot make a judgment with regard to the legality of any rulemaking not currently before us. Please know, if RGGI is approved through the steps outlined in the Regulatory Review Act and delivered to us for legal review, we will carefully consider all that has been entered into the record as we make a determination on the “form and legality” of the final rulemaking packet. Once our review is complete, we will issue our decision in accordance with the requirements of the Commonwealth Attorneys Act.

Sincerely,

Amy M. Elliott

Amy M. Elliott
Chief Deputy Attorney General
Legal Review Section
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Harrisburg, PA 17120